PETALING RUBBER ESTATE LTD. & ANOR. v. NADARAJAH & 164 ORS.

[S.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Wan Hamzah S.C. JJ.) February 13 & August 8, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 346 of 1986]

Labour Law – Special Relief Allowance – Whether part of wages – Overtime payments – Ordinary rate of pay – Employment Act, 1955, ss. 2, 69 & 77(1).

The respondents had brought a claim over the difference in overtime wages payable to them by their employers, the appellants. The respondents contended that Special Relief allowances which had been paid to plantation workers were included as part of the wages for the purposes of calculating the ordinary rate of pay, that is, the rate on which calculation of overtime payments should be made. The employers on the other hand maintained that Special Relief allowance was a voluntary payment and not part of wages. Harun J. in the High Court gave judgment in favour of the respondents and the appellants appealed.

Held, allowing the appeal: (1) in its true and original concept the Special Relief allowance is a temporary allowance payable over and above the wages of the employers. Unless there is evidence to show that the parties have contracted otherwise the Special Relief allowance cannot be regarded as part of wages. In other words unless the parties agree that the Special Relief allowance should be incorporated as part of wages it must be regarded according to its original concept and character, that is, payable over and above wages;

(2) in this case the evidence shows that it is payable not for work done but payable only after a normal day's work has been completed by the employees.

Cases referred to:

(1) *Asia Motor Co. (K.L.) Sdn. Bhd.* v. *Ram* [1985] 2 M.L.J. 202.
(2) *Metal Box Malaysia Bhd.* v. *Metal Industry Employees Union* [1982] 1 M.L.L.R. 210.
(3) *S. & U. Stores Ltd* v. *Lee* [1969] 1 W.L.R. 626.

SUPREME COURT.

V.T. Nathan (*Miss L.K. Peh* with him) for the appellants.

B. Lobo for the respondents.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the Judgment of the Court): The appeal before the learned judge of the High Court (Harun J.) was under section 77(1) of the Employment Act 1955 (Act 265) against the decision of the Director-General of Labour under section 69 of the Act. The sole question before the learned judge then and also before this court now is whether the Special Relief Allowance (SRA) is part of wages within the meaning of section 2 of the said Act.

To get a clear perspective of the problem some understanding of the background history of SRA is necessary. On October 20, 1973, the late Prime Minister (Tun Abdul Razak) issued a statement of policy that in order to alleviate the financial difficulties due to rising costs of essential commodities being experienced by government employees a Special Relief Allowance (SRA) would be granted to all Federal and State government employees, members of the Armed Forces and Police, employees of public agencies and statutory bodies receiving salaries of $500/- per month and below as well as pensioners (page 92 of appeal record). The policy was in fact implemented from 1st October of that year. The late Prime Minister emphasised in the same policy statement that the SRA was temporary and not subject to income tax or EPF contribution. The same policy statement also expressed the hope that employers in the private sector would likewise provide the same facilities for their employees in view of the high cost of essential commodities. Many employers responded to the call of the late Prime Minister. But we are now concerned only with the payment of SRA to plantation workers.

The subject of this appeal arose out of a claim before the Director-General of Labour under section 69(1) of the Employment Act by 565 members of the National Union of Plantation Workers who were employees of the appellants. The claim was over the difference in overtime wages payable to the employees since they contended that SRA paid to them was included as part of wages for the purposes of calculating the ordinary rate of pay, that is, the rate on which calculation of overtime payments should be made. The employers on the other hand maintained that SRA was a voluntary payment and not part of wages. The total amount of claim of all the 565 employees amounted only to $11,748.32.

It is common ground that none of the collective agreements entered into between the parties in 1976, 1977, 1979 and 1982 incorporated the payment of SRA. There is evidence however that about six months before the late Prime Minister made the policy statement on SRA, the Union had called on the Malayan Agricultural Producers Association (MAPA) for an increase in the cost of living allowance due to the increased costs of living. MAPA rejected the claim. After the announcement by the late Prime Minister the Union renewed its

demand for the payment of some allowance due to increased costs of living and requested the employers to comply with the request of the government. A proposal by MAPA was contained in a letter dated November 22, 1973 (page 99 in appeal record) which however was not agreed to as regards the quantum. This is seen in the Union's letter dated November 23, 1973 (page 102 in appeal record). MAPA then proposed a new rate in its letter dated December 31, 1973 (page 106 in appeal record). Then there was a threat of industrial action by the Union (page 108 in appeal record). A meeting was held between the parties on January 4, 1974, and a rate was finally agreed on and that SRA was to be paid only for a full day's work done. This was the rate contained in MAPA's letter dated January 9, 1974 (page 110 in appeal record) which gave "normal day worked" as the basis for payment of SRA. The Union accepted the new rate although it asked for an explanation of the meaning of the words "normal day worked" in their letter dated January 10, 1974 (page 114 in appeal record). In MAPA's letter dated March 16, 1974 (page 124 in appeal record) they reiterated that SRA was paid as an *"ex gratia* payment" and was paid "to relieve hardship".

It can be gathered from the events therefore that the employers were willing to pay SRA to the employees but the protracted negotiation was on the rate and when the final rate was agreed on, the basis of "normal day worked" was incorporated by the employer. The Director-General of Labour was therefore not correct in his grounds of judgment when he said that "the element of voluntariness and the purpose of helping the employee in view of the high cost of living are missing" (page 21 in appeal record). As reiterated in the Labour Department's letter dated February 9, 1974, the character of SRA to be paid by the employers was no different from the character of SRA intended by the late Prime Minister, that is to say, an *ex gratia* payment paid over and above the wages of the employees in order to relieve hardship due to increasing costs of essential commodities.

SRA in its original concept was meant to be temporary to tide over the difficult times and subject to review from time to time. Logically therefore SRA should never be taken to be part of wages. That is why in *Asia Motor Co. (K.L.) Sdn. Bhd.* v. *Ram*[1] although the Federal Court was sidering the definition of "remuneration" in the Wages Council Act, 1947 and the Wages Regulations (Shop Assistant) Order, 1970 the learned Lord President made a general comment on SRA when he said it is a "matter of common sense and general practice" that such payment should be treated as separate or distinct from wages or remuneration.

The next question is, is it correct that SRA is in any case caught under the definition of "wages" under the Employment Act 1955? Section 2 of the Act says that "wages" means all remuneration which is payable for work done in respect of the contract of employment but does not include several types of remuneration specified in the definition. The learned judge in the instant case followed his own decisions in certain Industrial Court cases which he had heard as President of the Industrial Court where he held that the definition of "wages" in the Act cast the net far and wide, and that according to him the law says you take everything you find except certain specific items which have been excluded by the definition – *Metal Box Malaysia Bhd.* v. *Metal Industry Employees Union.*[2] He was also probably influenced by *S & U Stores Ltd.* v. *Lee*[3] where the word "remuneration" was held not only to mean mere payment for work done but what the doer expected to get as a result of the work he did insofar as what he expected to get was quantified in terms of money. But in *S & U Stores Ltd.* v. *Lee,* the claim was under the U.K. Redundancy Payments Act, 1965 where an employee who had the use of a motorcar for the proper performance of his duties received uner the contract of employment weekly payments which included a specified sum described as "for expenses in connection with the use of his own motorcar". The ruling therefore was based on quite a different set of facts.

But there is another aspect of the decision of the learned judge. He would also seem to regard SRA as a payment for *work done* and therefore came well within the meaning of "wages" in the Employment Act. In his note in the instant case (following his previous findings) the learned judge recorded the following:

> "SRA paid since 1.10.73 – by whatever term used it is wages as defined in section 2 of the E.A. – for work done." (page 34 of appeal record).

In our view this is where the misconception started. It must be pointed out that what is payable as wages under the Act is not "all remuneration" but *all remuneration for work done in respect of his contract of service* excluding the specified types of remuneration. In the instant case

MAPA's letter dated January 9, 1974, specified the terms of SRA as follows:

"i) Special Relief Allowance (SRA)

With effect from the 1st of October, 1973, all plantation workers will be paid a temporary allowance as under:-

(a) *Workers whose total earnings for the month do not exceed $300/-*

Monthly-rated workers	. .$30/- p.m.
Daily-rated & piece-rated workers	. . $1.15 cts per normal day worked.

(b) *Workers whose earnings for the month are between $301 and $400*

Monthly-rated workers	. . $20/- p.m.
Daily-rated & piece-rated workers	. . .75 cts per normal day worked.

(c) *Workers whose earnings for the month are between $401 and $500*

Monthly-rated workers	. . $15/- p.m.
Daily-rated & piece-rated workers	. . .60 cts per normal day worked."

The words "per normal day worked" are not the same as "for work done". Remuneration payable for work done is not the same as remuneration payable upon completion of a full day's work. This was the basic misconception which converted an allowance clearly intended to be temporary only and payable over and above wages into remuneration incorporated as part of wages. It is clear that it was a rate fixed by MAPA that SRA would be payable only if the employee has completed a normal day's work for which he is remunerated according to his contract of employment.

Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages. In other words unless the parties agree that SRA should be incorporated as part of wages SRA must be regarded according to its original concept and character *i.e.* payable over and above wages. In the instant case the evidence shows that it is payable not for work done but payable only after a normal day's work has been completed by the employee.

We would therefore allow the appeal with costs to the appellants. Deposit to be refunded to appellants.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Lobo & Associates.*

COMMISSIONER OF LAND TITLES, PENANG v. LIM THENG HOE

[S.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) February 25 & August 10, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 319 of 1985]

Land Law – Interim Register – Correction of erroneous entry – Change of endorsement in respect of a holding from "Grant (First Grade)" to "Grant" – Appeal to Land Titles Appeal Board – Questions of law referred to High Court for determination – Whether Commissioner of Land Titles applied the correct section – Whether holding held in fee simple or not – Pre-existing estate – Document of original title – Surrender of old title for Statutory Land Grant – National Land Code (Penang and Malacca Titles) Act, 1963, ss. 15, 18, 31, 34, 40 & 41 – Crown Lands Ordinance (S.S. Cap. 113), ss. 5 & 11.

The Commissioner of Land Titles, Penang, acting under section 34 of the National Land Code (Penang and Malacca Titles) Act, 1963, made a correction of an entry in an Interim Register kept under section 31 of the Act by altering the endorsement in respect of a holding from "Grant (First Grade)" to "Grant." The respondent who was the registered proprietor being aggrieved by the decision of the Commissioner appealed to the Land Titles Appeal Board. The Board subsequently referred the following questions of law for determination by the High Court, by way of case stated –

(a) should the Director (*i.e.* the Commissioner of Land Titles) have applied section 40 or section 41 of the Act?

(b) if section 41 applies, is the title to the holding held in fee simple or not.

The learned Judge of the High Court held in answer to the first question that section 40 should have been applied and in consequence of this answer, he held that question (b) did not arise – see [1987] 2 M.L.J. 89. The appellant appealed.